# ASSOUR LAW

State Cannot Forfeit Railway Charters Because of Suit Brought in Federal Court.

CASE WILL BE APPEALED

OPINION HANDED DOWN BY SMITH M'PHERSON:

and unconstitutional the statute passed constitution. bidding foreign corporations from transferring suits brought against them from
the state to the federal courts upon
pain of forfeiture of their charters.

Springer's Untourst.

band, Harry Kendall Thaw, is on trial
for the killing of Stanford White, listened intently to every word. Justice
Dowling had ruled that he found nothpain of forfeiture of their charters. The application of the Rock Island, the Santa Fe, the St. Louis, Kansas City & Colorado, the Milwaukee & St. Paul and the Chicago & Alton Railway companies for an injunction to prevent John E. Swanger, secretary of state, enforcing the law, was granted by the

The Missouri law upon which today's

A Detroit Contractor, Believed to Be Dying of Rheumatism, Cured by Dr. Williams' Pink Pills.

Mr. George M. Glading, a contractor, of 16 Dumontier street, Detroit, Mich., and a member of the Modern Woodmen of America, Camp 957, of Custer, is certain that Dr. Williams' Pink Pills saved his life. He says:

an attack of rheumatism. I had the services of two doctors in Detroit, who, move my arms or legs.

for during the remaining few days or vestments therein.

"As I lay in bed I thought there must ing any compensation therefor, be something radically wrong in the treatment I was getting. I had no ing the directions in every particular. For two weeks it was a life and death struggle, but Dr. Williams' Pink Pills

harder than any of them. Dr. Williams' Pink Pills are sold by all druggists, or will be sent, postpaid, on receipt of price, 50 cents per box; six boxes for \$2.50, by the Dr. Williams Medicine Company, Schenectady, N. Y.

## Not in a Milk Trust Horlick's Malted Milk

The original and genuine Avoid cheap substitutes At your Soda Fountain

glass of Horlick's Malted Milk-hot-makes a delicious and refreshing lunch on a cold day.

Ask for Horlick's At All Druggists

Stirring the powder in hot water makes a nourishing, digestible fooddrink, better than tea or coffee-no cooking. A cupful-hot-on retiring induces restful sleep.

properly adjusted to wear comfortably-or money refunded.

More than that: We will give you the benefit of our expert knowledge, for we have made a study of trusses.

## Druehi & Franken

271 Main. Doll 100 and 188 Ind 100

Also cruches, rubber steckings-instock and made to order.

decision is based provides, specifically, that if any foreign or non-resident rali-way corporation, created and existing under the laws of any other state and doing a railway business from one point in the state to another point within the state, shall, without the written consent of the party, remove a case from the state court to a United States court, or shall, without said written consent, institute any suit against a citizen of the state in any federal court, then the secretary of state shall revoke

the license to do business, from one point within the state to any other point within the state, either in carry ing freight or passengers, and doing such business shall subject it to a penalty of not less than \$2,000 and not more than \$10,000 for each offense. And such disability shall continue for five years.

It is alleged in this case that complainant is about removing a case and the secretary will follow that by revok-Kansas City, Jan. 20.-Judge Smith fendant contends that this is in effect Kansas City, Jan. 20.—Judge Smith fendant contends that this is in effect McPherson, in the United States distant an action against the state, in violative court here today, declared void tion of the eleventh amendment to the the second time. The repetition lacked Convention of American Association The complainant conby the Missouri legislature in 1907 for- tends that the act of 1907 impairs its crowd in the court room where her hus-

Judge McPherson in his decision goes into the law of the case at great length and quotes freely from previous decisions to sustain his decision. The decision in part follows:

This court is mindful of the critcism by many laymen as well as many lawyers to the effect that United States! courts have no right, nor even the power to decree the invalidity of state statutes. The argument, or, rather, the statutes. The argument, or, rather, the witness. Mr. Jerome also sought to Preliminary to the meeting that the records know what talk, is, that the people know what block Mrs. Thaw's testimony in its enthey need, and that their representatirety on the ground that a conversashould determine what statutes we must the tragedy could not have any bearthe courts should not interfere by deree, and thereby thwart the legislative will. In other words, that it is well to limit the powers of executives and courts, but a written constitution restraining legislative bodies is all wrong. and that Great Britain has the model that his cross-examination would occugovernment. Officers of the state." continued Judge McPherson in his de- sion. cision, "too often decry the power of the nation. States rights is their shib- bits by constantly repeated objections ties. boleth," he added.

### Extreme of State's Rights.

"The most attractive argument to constant that Dr. Williams' some lawyers of recent days is that the state courts alone in the first interest in my younger days I was in charge from my younger days I was in charge should pass upon the question to cut this examination as short as possible. Mr. Littleton took the course indicated, only to find that of men getting out timber in northern as to the validity of state statutes with on cross-examination Mr. Jerome in-Michigan and was exposed to all kinds of weather and for years had never soared myself from work or exposure. As a result of this and stomach trouble, I was completely run down during the I was completely run down during the to many good people, but are so dan- tions spring of 1908 and fell an easy victim to gerous as to amount to a heresy. It is the extreme of state rights in a new

Judge McPherson cited a decision of after attending me for several months, the Wisconsin state supreme court ing the former testimony in a disagree said I could never get well. By this which unheld a state statute under able manner, was trying to discredi said I could never get well. By this which upheld a state statute under time I was helpless, my entire body which an insurance company's charter the witness in the eyes of the jury seemed to be paralyzed and I couldn't had been revoked for removing a case ove my arms or legs.

to a federal court. In this case, however, he says the company had no propold home in Custer, where I could be cared erty in the state, and had made no in- guise a tone of complete contempt

weeks I had to live. My lodge met me and I went home, where I had a nurse and employed our family physician to give me what aid he could, although he agreed with the declared with the declared with the declared with the more intimate details of the testimony. The case at bar," he says, "license the police were found today burica at a give me what aid he could, although he agreed with the doctors of Detroit, that I could not live.

"As I lay in bed I thought there must"

"In the case at bar," he says, "license the four Italians whose disappearance from this city in the darged with three of the four Italians whose disappearance from the clust into the whose disappearance from the clust into do business is not the question. He dead three of the four Italians whose disappearance from the clust into do business is not the questions he put to the witness, whose disappearance from the clust into do business after whose disappearance from the clust into the last three months has baffled the police were found today burica at a distance of about 150 yards from the missing man, and not by himself.

"As I lay in bed I thought there or the four Italians whose disappearance from the clust into do business after the declared with accepting deposits after the distance of the four Italians whose disappearance from the clust into the with acceptance whose disappearance from the clust into the distance of about 150 yards from the state and can not be removed. To prevent it from distance of about 150 yards from the state and can not be removed. To prevent it from distance of about 150 yards from the state hanging it the declared with acceptance of the four Italians whose disappearance from the clust in the last three on the state has the police were found today burica at the garden. The crimes and the garden. The crimes and the garden. The crimes and the garden and the garden. The crimes and the garden. The crimes and the

### \* Investors Lose All.

desire to quit life at my age and decided "It was invited to come into the to try Dr. Williams' Pink Pills, which I state and was told by the law then in had heard some relatives say they had force that it should have the same and used. I bought one dozen boxes and like standing as resident companies. commenced to take them at once, following the directions in every particular.

with benefits as great and with burboth District Attorney Jerome and his
dens no greater. After these investassistant, Mr. Garvan, who was ever ments had been made, and which can at his chief's eibow with new suggesnot be withdrawn, it is declared by leg- tions. She fenced with them as skilislation that no kind of litigation shall fully as she did a year ago, and at finally won, for I began to have some be carried on by it in any court other times reflected the mood of the distelling in my feet. After using the pills than the state courts, but leaving to trict attorney by answering in a voice steadily for six weeks I could walk the railway corporation organized unpitched in as loud a key as his own. across the room and six weeks later was der the laws sof the state to go to the The prosecutor's pittless and aggresdoing light work. My friends and doc- national courts with its litigation of all sive questions often struck fire, and tors were dumbfounded at my recovery. kinds arising under the laws or con-That was nearly four years ago and to-stitution of the United States. The know if the young woman had to day I am employing more men than I state corporation, organized under its Thaw certain things, she replied: used to and am working longer and laws, may sue or be sued in any court. state or national, if there is a federal the language you are using." question, but a foreign corporation dong business as a competitor must at shouted Jerome, who then had the reall times be subject to the state courts; ply stricken from the record. or if it ventures into a national court then the investors lose all."

In concluding, Judge McPherson olds as follows:

"The Missouri statute of 1907 is void, because it allows a resident company Monte Carlo in 1904, in an attempt to o sue in the federal court, if there is a federal question, and denies that right o a non-resident company, Regardthe last preceding statement, the statute is void because it seeks to take from the complainant its right to bring or remove a case to the United States court, which right is given by the constitution and the act of congress, which by article 6 of the constitution is declared to be the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding.

"The statute is void because it is an effort to not only impair, but to repudiate the contract of the state made with the company, by which it was induced to come into the state, making investments in large sums, and was authorized to do a state business, but ow declaring that it shall not do such business, thereby rendering it insolvent, and taking from the people along its line the use of the railroad for state business, the company will surrender under coercion rights given it by the national constitution and valid enact-

### ments of congress. Rule Not Conclusive.

"This court recognizes the rule that presumptively all legislation is valid. but it is only a presumption, and in no sense conclusive.

"This court recognizes that all doubts should be solved in favor of upholding egislation, but there are no doubts in

"This court recognizes that the secretary of state will be enjoined from that which he is commanded to do by state legislation. But it is also well time. known that if this court is in error, there can be a reversal by the supreme

Under the New Pure Food Law All Food Products must be pure and honestly labelled.

## BURNETT'S

VANILLA

tras Efty years ahead of the Law. It was always pure Vanilla. Every bottle now bears this label; Guaranteed under the Food ona Drugs Act June 30th, 1906," Serial Number 91, which has been assigned to us by the U.S. Dept. of Agriculture. JOSEPH BURNETT CO., SOSTON, MASS.

District Attorney Attempts to Terrorize Evelyn Nesbit Thaw on Witness Stand.

WITNESS IS UNRUFFLED

JUDGE DECIDES AGAINST CLOS-ING OF DOORS.

the vitality of the first recital, but the ing in the law for closing the doors great clamor for admittance from a opens tomorrow throng which hung about the building move to exclude spectators, took occasion, when it came his turn to crosstion which occurred three years before ruled the objection.

### All-Day Grilling.

Mrs. Thaw was on the stand all day py a greater part of tomorrow's ses-

Mrs. Thaw's story was broken into immateriality. The frequent objections and compel them, if it is necessary

### Jerome Shows Contempt

Mr. Littleton objected to it, declar ing that the district attorney by readany way by a direct question. Mr Jerome made no attempt to disin reading the testimony. Con-

n framing his questions. Mr. Littleton's objection on the ground of "offensiveness and impro priety" frequently were sustained by the court.

## Match for the Attorneys.

Mrs. Thaw matched wits against

"Yes. I told him, but I did not us "Don't argue with me, madam,

One New Point. But one new feature appeared in the testimony of the witness. This was when she told about Thaw swallowing the contents of a bottle of laudanum at end his life. Previously to this, at the Grand Hotel in New York, Thaw had talked of suicide, his wife declared, and had suggested that she also should take poison, as both their lives had been ruined. Mrs. Thaw said she humored Thaw at the time and diverted his mind. She was out of the room when he finally took the poison.

"Why didn't you tell us about this at the first trial?" demanded Mr. Je+

"Mr. Delmas said it might make Harry out too crazy," the witness re-torted, before the district attorney

### NARROWLY ESCAPED WITH THEIR LIVES

could stop her.

Telluride, Colo., Jan. 20 .- Ten passengers, occupants of the smoking car on the regular train from Durango to Telluride, narrowly escaped death in a wreck on the Rio Grande Southern railroad at Vance Junction last night. A broken rail threw the baggage car and smoker from the track. The smoker toppled over on its side and took fire from an overturned stove. The passengers were only slightly hurt.

## THOUSANDS SEEK WORK.

Seattle. Jan. 29 .- About 3.000 unemployed men marched to the mayor's office this afternoon to ask for Most of them are lumbermen who have been driven to the city by the closing of mills and camps.

court within less than a year or less

"There is but a single question pre-sented. The complainant asserts rights under the national constitution and laws enacted by congress. The defendant asserts rights under an act of the Missouri legislature and insist that there is no conflict. "This court holds that there is a

conflict. And there being a conflict, the one or the other must give way. And the constitution and laws of congress being the supreme law of the land, of course these enactments of the state must yield.
"The application for an injunction is suctained."

## Hadley Will Appeal.

Jefferson City, Mo., Jan. 20.-Herbert S. Hadley, Missouri's attorney general, said today: The cases to which Judge McPher

on's decision applies will be appealed."



## STOCK GROWERS AT DENVER

Opens Today-John W. Springer's Outburst.

to attend the convention of the Ameragainst the public, and there was a ican Live Stock association, which

The western stock show was formally all day long. Mr. Jerome, failing in his thrown open to the public this morning. It is beyond question the largest display of the kind ever seen outside examine the witness, to bring out all of the mammoth international live of the details of the first trial which stock show in Chicago, and in its car-Mr. Littleton of the defense had omit- lot entries it is the finest in the history Preliminary to the meeting of the

National association, the Colorado Cattle and Horse Growers' association met today. President John W. Springer have. And when so determined and eving on the mind of Thaw on the night denced by legislative enactment, that of the homicide. Justice Dowling overthe United States senate was an aggregation. nade an address which was the sensagation of mill'onaires put there by the trusts. He criticised the strict protecionists of Massachusetts, who demanded a reduction of the tariff on wool and long, and Mr. Jerome announced when hides, but pooh-poohed the westerners adjournment for the day was taken cry for a reduction on shoes and clothes. that his cross-examination would occuand other corporate and trust interests. he said, must be made to cease the monopolizing of utilities and necessi-"If they do not cease their tacfrom the prosecution, who sought to ties," he said, "I know there is not exclude all details on the ground of man in this hall who will not rise u

You can avoid pneumonia and other

when he could not discredit her in Dead Bodies of Three Italians Found at Florence, Colo .- Partial Confession of Suspect.

Florence, Colo., Jan. 20 .- The dead

The Sensational

Has captured the town. The Millinery Department was crowded all day Monday. Tuesday will be another big day. Read the Price Reductions:

\$3.50 Trimmed Hats

\$6.00 Trimmed Hats

\$10.00 Trimmed Hats

## **SENSATIONAL** Waist Sale

This counter was crowded all day Monday. Many new Waists will be added today. Waists up to \$4.00 and \$4.50 have been cast into this great Slaughter Sale.

This Sale comprises our entire line of beautiful Nun's Veilings, Albatross and fine Sicilians. ATTEND THE SALE TODAY.

who is under persons. The corpses are those of Dominio Minichello, who was a partner of Nernino in a market gardening business; Ercola Buffetti, an employe Nernino disclosed the hiding place of

charged with the murder of the four had been killed by a blow on the head.

at the garden, and Mrs. Frank Pal- the bodies when taken to the scene of

BANKERS UNDER /. RREST.

Rocky Ford, Colo., Jan. 20 .- President John E. Gidding, Cashier E. J. Smith jr., of the defunct State Bank of Rocky Ford, were arrested this afternoon

## Commissioner Smith vs. The Standard Oil Co.

From the Railway World, January 3, 1908.

Mr. Herbert Knox Smith, whose zeal in the cause of economic reform has been in no wise abated by the panic which he and his kind did so much to bring on, is out with an answer to President Moffett of the Standard Oil company of Indiana. The publication of this answer, it is officially given out, was delayed several weeks, "for business reasons," because it was not deemed advisable to further excite the public mind, which was profoundly disturbed by the crisis. Now that the storm clouds have rolled by, however, the commissioner rushes again into the fray.

Our readers remember that the chief points in the defense of the Standard Oil company. as presented by President Moffett, were: (1) that the rate of six cents on oil from Whiting to East St. Louis had been issued to the Standard Oil company as the lawful rate by employes of the Alton, (2) that the 18-cent rate on file with the interstate commerce commission was a class and not a commodity rate, never being intended to apply to oil, (3) that oil was shipped in large quantities between Whiting and East St. Louis over the Chicago & Eastern Illinois at six and one-fourth cents per hundred pounds, which has been filed with the interstate commerce commission as the lawfui rate, and (4) that the 18-cent rate on oil was entirely out of proportion to lawful rates on other commodities between these points of a similar character, and of greater value, such, for example, as linseed oil, the lawful rate on which was eight cents. President Moffett also stated that thousands of tons of freight had been sent by other shippers between these points under substantially the same conditions as governed the shipments of the Standard Oil company.

This defense of the Standard Oil company was widely quoted and has undoubtedly exerted a powerful influence upon the public Naturally the administration, which has staked the success of its campaign against the "trusts" upon the result of its attack upon this company, endeavors to offset this influence, and hence the new deliver-

ance of Commissioner Smith. We need hardly to point out that his rebuttal argument is extremely weak, although as strong, no doubt, as the circumstances would warrant. He answers the points made by President Moffett substantially as follows: (1) The Standard Oil company had a traffic department, and should have known that the six-cent rate had not been filed, (2) no answer, (3) the Chicago & Eastern Illinois rate was a secret rate because it read, not from Whiting, but from Dolton, which is described as "a village of about 1,500 population just outside of Chicago. Its only claim to note is that it has been for many years the point of origin for this and similar secret rates." The commissioner admits in describing this rate that there was a note attached stating that the rate could also be used from Whiting.

The press has quite generally bailed this statement of the commissioner of corporations as a conclusive refutation of what is

evidently recognized as the strongest rebuttal argument advanced by the Standard. In fact, it is as weak and inconclusive as

the remainder of his argument. The lines of the Chicago & Eastern Illinois do not run into Chicago. They terminate at Dolton, from which point entrance is made over the Belt Line. Whiting, where the oil freight originates, is not on the lines of the Chicago & Eastern Illinois, which receives its Whiting freight from the Belt Line at Dolton. former practice, now discontinued, in filing tariffs was to make them read from a point on the line of the filing road, and it was also general to state on the same sheet, that the tariff would apply to other points, e. g., Whiting. The Chicago & Eastern Illinois followed this practice in filing its rate from Dolton, and making a note on the sheet that it applied to Whiting. That was in 1895, when this method of filing tariffs was in

common use.

Now let us see in what way the intending shipper of oil could be misled and deceived by the fact that the Chicago & Eastern Illinois had not filed a rate reading from Whit-Commissioner Smith contends that 'concealment is the only motive for such a circuitous arrangement," i. e., that this method of filing the rate was intended to mislead intending competitors of the Standard Oil company. Suppose such a prospective oil refiner had applied to the interstate commerce commission for the rate from Chicago to East St. Louis over the Chicago & Eastern Illinois, he would have been informed that the only rate filed with the commission by this company was 6% cents from Dolton, and he would have been further informed, if indeed he did not know this already, that this rate applied throughout Chicago territory. So that whether he wished locate his plant at Whiting, or anywhere else about Chicago, under an arrangement of long standing, and which applies to all the industrial towns in the neighborhood of Chicago, he could have his freight delivered over the Belt Line to the Chicago & Eastern Illinois at Dolton and transported to East St. Louis at a rate of 64 cents. Where then is the concealment which the commissioner of corporations makes so much of? Any rate-from Dolton on the Eastern Illinois or Chappell on the Alton, or Harvey on the Illinois Central, or Blue Island on the Rock Island, applies throughout Chicago territory to shipments from Whiting, as to shipments from any other point in the district. So far from the Eastern Illinois filing its rate from Dolton in order to deceive the shipper, it is the commissioner of corporations who either betrays his gross ignorance of transportation customs in Chicago territory or relies on the public ignorance of these customs to deceive the public, too apt to accept unquestioningly every statement made by a government official as necessarily true, although, as in the present instance, a careful examination shows these statements to be false.

The final point made by President Moffett that other commodities of a character similar to oil were carried at much lower rates than 18 cents, the commissioner of corporations discusses only with the remark that 'reasonableness' of this rate is not in question. The question is whether this rate constituted a discrimination as against other shippers of oil." and he also makes much of the failure of President Moffett to produce before the grand jury evidence of the al-

leged illegal acts of which the Standard Oil official said that other large shippers in the territory had been guilty. Considering the fact that these shippers included the packers and elevator men of Chicago, the action of the grand jury in calling upon President Moffett to furnish evidence of their wrongdoing may be interpreted as a demand for an elaboration of the obvious; but the fact that a rate-book containing these freight rates for other shippers was offered in evidence during the trial and ruled out by Judge Landis was kept out of sight. President Moffett would not, of course, accept the invitation of the grand jury, although he might have been pardoned if he had referred them to various official investigations by the interstate commerce commission and other departments of the government.

We come back, therefore, to the conclusion of the whole matter, which is that the Standard Oil company of Indiana was fined an amount equal to seven or eight times the value of its entire property, because its trafnc department did not verify the statement of the Alton rate clerk, that the 6-cent commodity rate on oil had been properly filed with the interstate commerce commission There is no evidence, and none was introduced at the trial, that any shipper of oil from Chicago territory had been interfered with by the 18-cent rate, nor that the failure of the Alton to file its 6-cent rate had resulted in any discrimination against any independent shipper-we must take this on the word of the commissioner of corporations and of Judge Landis. Neither is it denied even by Mr. Smith that the "independent' shipper of oil, whom he pictures as being driven out of business by this discrimination of the Alton, could have shipped all the oil he desired to ship from Whiting via Dolton over the lines of the Chicago & Eastern Illinois to East St. Louis. In short, President Monett's defense is still good, and we predict will be so declared by the higher court.

The Standard Oil company has been charged with all manner of crimes and misdemeanors. Beginning with the famous Rice of Marietta, passing down to that apostle of popular liberties, Henry Demarest Lloyd, with his Wealth Against the Commonwealth, descending by easy stages to Miss Tarbell's offensive personalities, we finally reach the nether depths of unfair and baseless misrepresentation in the report of the commissioner of corporations. The Standard has been charged with every form of commercial piracy and with most of the crimes on the corporation calendar. After long years of strenuous attack, under the leadership of the president of the United States, the corporation is at last dragged to the bar of justice to answer for its misdoings. The whole strength of the government is directed against it, and at last, we are told, the Standard Oil company is to pay the penalty of its crimes, and it is finally convicted of having failed to verify the statement of a rate clerk and is forthwith fined a prodigious sum, measured by the car. Under the old criminal law, the theft of property worth more than a shilling was punishable by death. Under the interpretation of the interstate commerce law by Theodore Roosevelt and Judge Kenesaw Landis, a technical error of a traffic official is made the excuse for the confiscation of a vast amount of